Executive Order Signals Change in Hiring Foreign Workers to Fulfill Federal Contracts

By Elizabeth M. Klarin

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The latest Presidential Proclamation impacting immigration, signed yesterday (August 3, 2020), has taken aim at U.S. agencies contracting with the federal government who employ temporary foreign labor—with a particular emphasis on those employing H-1B visa holders—or who otherwise outsource contract jobs to foreign workers.

All federal agencies will now be required to ensure that only U.S. citizens and nationals (Green Card holders) are appointed to the competitive service. The U.S. Department of Labor will also finalize guidance to prevent moving H-1B workers to other employers' job sites, which is seen as displacing American workers.

All executive department heads and agencies that enter into contracts have been tasked with reviewing the performance of contracts (including subcontracts) awarded between fiscal years 2018 and 2019, to assess:

1. whether contractors (including subcontractors) used temporary foreign labor for contracts performed in the United States, and, if so, the nature of the work performed by temporary foreign labor on such contracts; whether opportunities for United States workers were affected by such hiring; and any potential effects on the national security caused by such hiring; and
2. whether contractors (including subcontractors) performed in foreign countries services previously performed in the United States, and, if so, whether opportunities for United States workers were affected by such offshoring; whether affected United States workers were eligible for assistance under the Trade Adjustment Assistance program authorized by the Trade Act of 1974; and any potential effects on the national security caused by such offshoring.

The aim of this executive order is to improve the economy and efficiency of federal procurement, and protect national security. However, the order is even more specific about where it feels the problem sits: with the H-1B visa program, a favorite target of criticism. The ultimate goal, according to the order, is to "protect United States workers from any adverse effects on wages and working conditions caused by the employment of H-1B visa holders at job sites (including third-party job sites), including measures to ensure that all employers of H-1B visa holders, including secondary employers, adhere to the [legal]requirements" protecting U.S. workers, pay and working conditions as outlined in Section 212(n)(1) of the Immigration and Nationality Act.

Questions remain as to whether this is simply one more in a line of volleys against the H-1B visa program, after Presidential Proclamation 10052 (June 22, 2020) temporarily suspended the entry into the United State of certain foreign nationals seeking entry on H-1B, H-2B, J or L visas, through the end of 2020. The H-1B visa program has long been under fire by the U.S. government, with FY 2020 Requests for Additional Evidence (RFEs) on H-1B

petitions nearly double what they were in FY 2015, currently sitting at 47.2% of all petitions (as of in the first quarter of FY 2020).

In June 2020, USCIS agreed to a settlement with the business group *ITServe Alliance*, which overturned 10 years o policies restricting employers and H-1B visa holders. Program supporters hoped that this move would mean lower H-1B denial rates and fewer RFEs, as the government's full court press against H-1B workers was put in check. However, the government has since taken action to regain the upper hand, both with the June 22nd Presidential Proclamation and this latest move.

Please contact an LMWF immigration team member with any specific questions, and check back regularly on this blog for updates on changing rules and policies.

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